IN THE

Supreme Court of the United States

No. 77-1377

JAMES G. HULL, JR.,

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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Supreme Court of the United States

No.

JAMES G. HULL, JR.,

Petitioner,

v.

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Respondent.

PETITION FOR WRIT OF CERTIORARI

Petitioner, JAMES G. HULL, JR., prays that a Writ of Certiorari be issued to review the judgment of the Supreme Court of the State of Florida entered in the above captioned case on December 7th, 1977, petition for rehearing denied February 24th, A.D., 1978 (Said judgment is incorporated herein as Appendix A).

Petitioner's request for stay in the Supreme Court of Florida, in the District Court of Appeal, Second District, and in the Circuit Court of the Sixth Judicial Circuit, in and for Pasco County, Florida, was granted, up to and including March 27th, 1978, to allow Petitioner to seek review in the Supreme Court of the United States and to obtain any further stay from this Court. (Order granting stay is incorporated herein as Appendix B).

The Circuit Court, Sixth Judicial Circuit, in and for Pasco County, Florida, entered a judgment on the 29th day of November A.D., 1976, sentencing the Petitioner to a term of 3 years and a fine in the amount of $3,000.00 for a conviction under Count I of the Information for unlawfully bringing into the State of Florida a controlled substance, to-wit: cannabis, in excess of 5 grams, contrary to Chapter 893.13 (1) (d) of the Florida Statutes; and, further sentenced the Petitioner to a term of 1 year for a conviction under Count II of the Information for conspiring to bring into the State of Florida a controlled substance, to-wit: cannabis, contrary to Florida Statutes 777.04/Florida Statutes 893.13 (1) (d)/Florida Statutes 26.012; Both sentences to be served consecutively. (Said judgment is incorporated herein as Appendix C).

The Appellate Court of the State of Florida, Second District, rendered its affirmed per curiam decision, without opinion, on July 15th, 1977, wherein it affirmed the judgment and sentence of the Circuit Court, with its incorporated herein as Appendix D. This is reported at 349 So. 2d, page 237.

Petition for rehearing was denied by the District Court of Appeal of the State of Florida, in and for the Second District, on Thursday, September 1st, 1977.

Petition for Writ of Certiorari in the Supreme Court of the State of Florida was filed on the 16th day of September, A.D., 1977, and the Supreme Court, on the 7th day of December, A.D., 1977, denied to issue said Writ. Justices Adkins, Boyd, and Hatchett, JJ, dissenting. (The order denying Petition for Writ of Certiorari is incorporated herein as Appendix A). Petition for rehearing was denied by the Court on February 24th, 1978. (The order denying is

incorporated herein as Appendix B). The decision of the Supreme Court of the State of Florida is not yet reported, but the case number is 52,439.

This latter order is a judgment of last resort in the State of Florida.

The stage of the proceedings in which the Federal questions sought to be reviewed were first raised was: (1) In the trial court, upon objection by counsel for defendant to the introduction of the testimony of Officer Maxwell, and, by motion for a mistrial and objections to the supplemental charges to the jury: (2) At the Appellate level, 2nd District Court of Appeal of Florida by assignment of error No. 12, as to the Judicial notice taken by the Court of the nautical chart, and by assignment of errors No. 16, 17, 18, 19, and 20, as to the supplemental instructions to Jury, after deadlock. (See Vol. I, pages 52 & 53): (3) On Petition for Certiorari to the Florida Supreme Court in the Jurisdictional statement.

Thereafter, the Petitioner filed his request for a stay pending Petition for Writ of Certiorari to the United States Supreme Court, which petition is pending with this Court.

STATEMENT OF JURISDICTION

The jurisdiction of this Court is invoked under Section 1257 (3), Title 28 U.S.C.

QUESTION PRESENTED

The first Federal question raised in this petition is:

POINT I

WHETHER THE STATE TRIAL COURT MAY TAKE JUDICIAL NOTICE OF A NAUTICAL CHART PREPARED BY THE DEPARTMENT OF COMMERCE OF THE UNITED STATES OF AMERICA AS PROOF OF A MATERIAL ELEMENT OF THE CRIME THAT THE DEFENDANT DID UNLAWFULLY BRING INTO THE STATE OF FLORIDA A CONTROLLED SUBSTANCE, TO-WIT: CANNABIS, FROM OUTSIDE THE 3 LEAGUE BOUNDARY OF THE STATE.

CONSTITUTIONAL PROVISION INVOLVED

This case presents questions concerning the construction and interpretation of the 14th Amendment to the United States Constitution, which provides:

"***nor shall any State deprive any person of life, liberty, or property, without due process of law.***" Vol. 25, F.S.A., page 151.

STATEMENT

Petitioner was informed against by direct information filed by the State Attorney for the Sixth Judicial Circuit of the State of Florida; Petitioner, together with a co-defendant, were jointly charged under a two count information, with unlawfully bringing into the State of Florida a controlled substance, to-wit: cannabis in excess of 5 grams, in violation of Chapter 893.13 (1) (d) of the Florida Statutes and conspiracy to commit such offense.

The case was tried to a jury, which, on the 25th day of July, A.D., 1976, returned a verdict of guilty as charged as to each count.

Petitioner's motion for a new trial was denied.

The events, sufficient for an understanding of the facts leading to Petitioner's conviction, are as follows:

The incident leading to the Petitioner's arrest occurred on the morning of April 24th, 1976, when a local fisherman observed the boat, "Miss Christina", a 20' T-craft, adrift and abandoned in an area known as Fillman's Bayou, a marshy area near Aripeka off the coast of Pasco County, Florida. Floating around the boat were several large packages, which were later identified as marijuana. One of the packages was retrieved by the fisherman and taken onshore and to the home of a deputy sheriff, where it was displayed to him. Other law enforcement officers were alerted and dispatched to the area of Fillman's Bayou, where the boat, "Miss Christina", was found still adrift and abandoned. The assorted bails of floating marijuana were retrieved, together with the boat, and a search was instigated to attempt to locate individuals connected with the "Miss Christina" and the contents found floating in the bayou.

Sometime later that day, after an all-point bulletin was radioed to other participating law enforcement agencies, another T-craft of the same size and length of the "Miss Christina" was found approaching the mouth of the "Pithlachascotee River". This boat was occupied by two white males. It was being operated by the Petitioner, James Hull, and one William Rozuk. As the T-boat berthed at "Old Pier 19", in Pasco County, Florida, it was discovered that the Florida registration numbers did not match those

that were supposed to be on the boat. Neither of the occupants of the boat could give an explanation of ownership or right to the possession or use of the same. During the course of the investigation, a contract of immunity was reached between Mr. Rozuk for his testimony to be used against the Petitioner Hull and the co-defendant, Rogers.

At the trial, the witness, Rozuk, testified under the indemnity contract for the State of Florida, and in essence testified that by prearrangement with the defendant, Rogers, that the witness and the Petitioner, James Hull, picked up a T-craft at Astor, Volusia County, Florida, and hauled the boat to Hernando, Florida, where the two stopped in a motel and spent the night. The T-craft was not the "Miss Christina", but one rigged with twin 70 H.P. motors. The next morning the two continued their trip and put the T-craft into the water at Hudson, Florida, where they were to make contact in the "area of marker 10" and were to identify themselves as "Lurch" and "Jim".

The witness, Rozuk, and the Defendant, Hull, proceeded to marker 10 just before sunset and established contact with another boat. The witness testified that the boat was "near marker 10; I think due South of it." (Vol. 4, at page 641, line 23). The witness further testified that it was approximately ½ mile due South of marker 10. This boat was a larger boat approximately 60 to 70 feet in length and was used to unload bales of marijuana into the T-craft. These were then transported by the T-craft onto land. A 68° course was taken by the T-craft to the landing site at Aripeka in Pasco County, Florida, where, upon landing, the two individuals found that it was not the right place. The witness, Rozuk, and the Petitioner, Hull, then went back to the boat,

"looked at the map to try and figure out from the landmarks where they were supposed to be," went back to shore, and loaded the boat. The individuals then walked into Aripeka and "found out where we were supposed to be," obtained a canoe, rowed out to where the T-boat had been left on a sandbar, stranded, dislodged it, took it to the drop-off point, and unloaded it. (Vol. 4, at page 652).

The witness, Rozuk, returned the canoe and the Petitioner, Hull, stayed with the T-craft. The two later met, returned to marker 10, where they contacted two other individuals in the other T-craft.

One boat proceeded North and the Petitioner and Rozuk proceeded due South from marker 10. In a short time they met the larger boat, loaded more bales into the smaller boat, took a 68° course back to land where the bales were unloaded at the same place where the bales were dropped the previous day.

The boat was then washed from the inside and the two individuals proceeded to New Port Richey, where they spent the night.

At this point in time, Hull and Rozuk were advised that something was "amiss". They then proceeded due West from New Port Richey to warn the larger boat that things had gone wrong, but due to bad reception were unable to "contact the larger boat". (Vol. 4, at page 672).

The two then proceeded back to New Port Richey and upon pulling into the river they were surrounded by police, pulled in, and taken into custody. Florida Marine Patrol Officer Albert Maxwell testified, over defendant's objection, that at the time of the arrest of the defendant that he was a salt water law enforcement officer for the State of Florida, assigned specifically to the Gulf coast area. He

testified that the jurisdiction of the State of Florida is three leagues or 10.359 nautical miles. The witness testified that he was familiar with marker 10, which is a directional marker placed by the United States Coast Guard as a navigational aide. He testified that marker 10 is outside three leagues. The officer testified that he made this determination by scaling it out on a nautical chart. The chart was purchased from a marina and in the opinion of the patrol officer was "reliable". The chart was prepared by the Department of Commerce and is numbered 11409. It encompasses an area from Anclotek to Crystal River and was dated February of 1976. Marker 10 is shown on the chart. The chart has a scale and by running a compass reading from the initial point with a "Hudson tripod" and using a triangulation between two points on the chart, the officer testified that marker 10 was 11.850 nautical miles from the nearest point of land, West of Pasco County, Florida. (Vol. 5 at page 839).

The Court took judicial notice that the map was an official document of the United States Government. The map was never offered as evidence, but was marked as Defendant Hull's exhibit 1, not in evidence. Counsel for the defendant duly objected to Officer Maxwell testifying as to the distance of marker 10 from the use of the document not otherwise authenticated nor in evidence.

The trial commenced on July 20, 1976, and, on Saturday, July 24th, 1976, the jury retired at 3:41 P.M. to consider its verdicts; it returning at approximately 6:50 P.M., and announced to the Court that it was deadlocked. Over defendant's objection, the Court gave the Florida Standard Jury Instruction Deadlock Charge. (Allen Charge).

At 10:22 P.M. on the same date the jury returned a verdict of guilty as to each defendant on each count. However, one of the jurors, upon being polled, stated the verdicts as rendered was not the juror's verdict. The defendant moved for a mistrial, which was denied and over the objection of counsel for the defendant, the Court again inquired of the juror as to whether or not the verdict returned was her verdict to which the juror responded, "they persuaded me into it." (Vol. 7 at page 1184). Again, over the defendant's objection, the Court advised the jury that it had previously been instructed that verdicts rendered must be unanimous and because of the "utterances of Mrs. Allison" it was not clear to the Court whether or not the verdicts reached were unanimous and the jury was returned to the jury deliberation room for the purpose of "arriving at your verdicts." (Vol. 2, page 1193).

The jury returned a unanimous guilty verdict at 12:10 A.M. on Sunday, July 25th, 1976.

Defendant's motion for a new trial was denied.

SUMMARY OF ARGUMENT

POINT I

The Court, by taking judicial notice, of a map, not in evidence, created a arbitrary presumption as to the accuracy of Marine Officer Maxwell's calculations as to the distance of marker 10 to the nearest point of land in Pasco County, Florida, and thus, there was no rational connection between the fact proved and the ultimate fact presumed. Courts may not establish legal presumptions from which ultimate facts may be established where there is no rational connection between the facts proved and the facts presumed. Inference of the one from proof of the other is

arbitrary and in violation of due process, as guaranteed by Amendment 14 to the Constitution of the United States of America.

The ultimate fact to be proved under a State statute for unlawfully bringing into the State a controlled substance may not rest upon an arbitrary presumption where there is no rational connection between the ultimate fact to be proved and the fact presumed.

Due process is not a mathematical formula, but it is the requirement of a fair trial, that kind of trial which is in accordance with our traditions of justice. Such a presumption is unreasonable and arbitrary and denies the defendant due process as guaranteed under the 14th Amendment to the Constitution of the United States of America.

ARGUMENT AS TO POINT I

A material element for the State to prove was the "unlawful bringing in"—the importation of marijuana into the State of Florida. The proof presented on this element was that there were ships in the vicinity of marker 10, to meet with a larger boat coming from the West to have marijuana unloaded. There was no direct evidence as to exact location of any of these vessels on a nautical chart; however, a nautical chart was used to calculate that marker 10 was some 1.491 nautical miles outside the three league territorial jurisdiction of the State of Florida. (See Article 2, Section 1, Florida Constitution—State Boundaries).

For the purpose of proving this essential element of the location of ships and marijuana as being outside the three league boundary of Florida, the Court took judicial notice of a Federal Government nautical chart, which formed the basis for calculating the boundaries of the State in relation

to location of the crime. Petitioner asserts that when a Court takes judicial notice of demonstrative evidence, requiring authentication, that said act of the Court violates the due process rights of the Petitioner under the 14th Amendment of the United States Constitution by allowing the Government to infer a most material element of the offense; Here, importation from outside Florida.

As this Court observed some eight years ago in *Leary v. United States*, 395 U.S. 6, 23 L Ed 2d 57, 89 Sup. Ct. 1532 (1969), that a considerable proportion of domestically consumed marijuana available in the United States is grown here, the Petitioner submits that there is no rational connection between a point on an unauthenticated map, the vague testimony as to location of ships within one (1) mile of the territorial boundary of the State, and the ultimate fact that marijuana was imported from outside that State.

Since this Court held long ago in *Johnston v. Jones*, 1 Black 209, 17 L. Ed 117 (1862), that maps are not independent evidence and are only competent and material insofar as they are shown to be correct by other testimony in the case, the taking of judicial notice of said map here violates the concept of due process of law.

In *Rhoads v. Virginia-Florida Corporation*, 476 F.2d 82 (1973), and 549 F.2d 985 (1977), the United States Court of Appeals for the Fifth Circuit twice reversed a civil case concerning erosion damages caused by a seawall located on the Florida coastline because of the failure of a party's witnesses to verify survey drawings of the Florida coastline, and because of the inability of the surveyors to prove an exact location of the mean high water mark; hence, the Petitioner asserts that if Federal Courts are reluctant to affirm civil judgments based upon unverified and inexact

testimony produced from maps and charts, that our Courts should just as jealously safeguard one's right not to be deprived of liberty without due process of law in a criminal case based upon testimony as inexact and unverified.

We submit this issue is a vital importance to the citizens of all States with coastal boundaries, and especially the citizens of Florida, which is a peninsula state.

QUESTIONS PRESENTED

The second Federal question raised in this petition is:

POINT II

WHETHER THE TRIAL JUDGE'S SUPPLEMENTAL INSTRUCTION TO THE JURY THAT THEIR VERDICTS MUST BE UNANIMOUS, AFTER THE ANNOUNCEMENT OF A HUNG JURY, AND THE GIVING OF AN ALLEN CHARGE, TOGETHER WITH A SINGLE JUROR'S STATEMENT THAT THE VERDICT OF GUILTY AS RETURNED WAS NOT THE JUROR'S VERDICT, HAD THE COERCIVE EFFECT OF FORCING THE JUROR TO SURRENDER VIEWS CONSCIENTIOUSLY HELD, WAS A DENIAL OF DUE PROCESS UNDER THE 14th AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND THE RIGHT TO A TRIAL BY AN IMPARTIAL JURY UNDER THE 6th AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES OF AMERICA.

CONSTITUTIONAL PROVISION INVOLVED

This case presents a question concerning the construction and interpretation of the 6th and 14th Amendments to the United States Constitution, which provides:

6th—"In criminal prosecutions, the accused shall enjoy the right to a ***trial, by an impartial jury***" Vol. 25, F.S.A., page 132.

14th—"***nor shall any state deprive any person of life, liberty, or property, without due process of law.***" Vol. 25, F.S.A., page 151.

STATEMENT

See the above statement referring to the above point heretofore enumerated with particularity.

SUMMARY OF ARGUMENT

POINT II

Statements of the trial judge to a jury that their verdicts must be unanimous, after announcement of an inability to reach a unanimous verdict, coupled with an Allen charge, and the rendition of a verdict of guilty not concurred in by one member of the jury, had the coercive effect of surrendering the views of the recalcitrant juror conscientiously held by reason of the statement to the juror by the trial judge, that the Court was returning the jury to the jury room because of the utterances of the juror, is a denial of due process under the 14th Amendment to the Constitution of the United States of America and to a trial by an impartial jury as guaranteed under the 6th Amendment to the

Constitution. (*Harris v. U.S.*, 391 Fed. 2d, 348, 6th Circuit, 1968)

An "Allen" charge becomes erroneous, when the Court, after two hours of further deliberation, instructs the jury that the verdicts rendered must be unanimous, and orders the jury to deliberate further to return a unanimous verdict because of the statement of one juror that the guilty verdict was not her verdict because the others persuaded her into it. (*Harris v. U.S.*, 391 Fed. 2d, 348, 6th Circuit, 1968)

Any variation from the Allen charge will subject the additional instruction to the jury by the trial judge to intensive scrutiny and creates time pressures on the jury which no further jury instruction can undo. (*U.S. v. Taylor*, 530 Fed. 2d, 49, 5th Circuit, 1976)

Any questioning of a juror during deliberations requiring the numerical division requires automatic reversal. (*U.S. v. Seawell*, 550 Fed. 2d, 1159, 9th Circuit, 1977) (*U.S. v. Cheramie*, 520 Fed. 2d, 325, 5th Circuit, 1975)

Supplemental jury instructions, after an Allen charge which has the effect of coercing the jury into unanimous decisions is a violation of Federal constitutional standards under the due process clause of the 14th Amendment to the Constitution of the United States of America, and the right to a trial by an impartial jury under the 6th Amendment to the Constitution. (*U.S. v. Seawell*, 550 Fed. 2d, 1159, 9th Circuit, 1977)

A subsequent jury instruction, by the trial court, after the rendition of an Allen charge that their verdicts must be unanimous has the effect of coercing a verdict and any conviction is in violation of the due process requirements of the 14th Amendment to the Constitution of the United States, as well as the right to a trial by an impartial jury

under the 6th Amendment to the Constitution. (*Jenkins v. U.S.* 380 U.S., 445)

The correctness of a supplemental instruction by the judge to a deadlocked jury, after the giving of an Allen charge, rests in the sound discretion of the trial judge, but the correctness of the supplemental instructions must be determined by consideration of facts of each case and exact words used by the trial court. (*Powell v. U.S.*, 297, Fed. 2d, 318, 5th Circuit, 1962)

A statement to a juror, after an announcement of deadlock and the assertion by the juror that "they persuaded me into it" coupled with an admonition that the Court has previously instructed that verdicts rendered must be unanimous and because of the utterances of the juror, it was not clear to the Court whether or not the verdicts reached were unanimous and that the Court whether or not the verdicts reached were unanimous and that the Court was returning the jury to the jury room for the purpose of "arriving at your verdicts" is not only coercive in nature, but is misleading in fact in that it precludes the right of the defendant to rely on the possibility of a disagreement by the jury resulting in a mistrial. (*Harris v. U.S.*, 391, Fed. 2d, 348, 6th Circuit, 1968)

ARGUMENT AS TO POINT II

The lead U.S. Supreme Court case is *Jenkins v. U.S.*, 380, U.S. 445, 13 L Ed 2d 957, 85 S. Ct. 1059, 1965, where, in a per curiam decision, Clark, J., and Harlan, J., dissenting, the Court reversed, as coercive, a statement by the trial judge, after the jury announced that it had been unable to agree upon a verdict that "you have got to reach a decision in this case."

The possibility of a disagreement by the jury is part of the jury system. (See *Green v. U.S.*, 309 Fed. 2d 852) (*Thaggard v. U.S.*, 354 Fed. 2d 735).

As was stated in *Harris*, supra, "the vice in an extension of the Allen charge is that because of the Court's insistence on a verdict, a minority will surrender its conscientiously held opinions to the vote of the majority for the sake of agreement, as requested by the Court." (At page 356).

It is to be noted that the jury returned its ultimate verdict at 12:05 A.M. Sunday morning, July 25, 1976, after a five day trial.

The fact that the jury was at a delicate balance in its deliberations, is evidenced by the following sequence of events which occurred on Saturday, July 24, 1976:

3:41 P.M.—Jury retires

*6:30 P.M.—Jury returns deadlock.

**6:40 P.M.—Allen charge.

6:50 P.M.—Jury retires.

10:22 P.M.—Jury returns non-unanimous guilty verdict.

10:58 P.M.—Jury returned to jury room with instructions by the Court that the verdicts must be unanimous.

July 25, 1976, 12:10 A.M.—Jury returns unanimous guilty verdict.

The supplemental inquiry by the Court to single juror, who, upon being polled, stated that the verdict as rendered was not her verdict, that "they persuaded me into it" (Vol. 7, page 1, 184), followed by an additional charge that their verdicts must be unanimous, is coercive, requiring a new

*The exact time the jury returned is not reflected accurately in the record, but the record does reflect that after the Allen charge was given, the jury was returned to the jury room at 6:50 P.M. (Vol. 7, page 1,174).

trial. (See *U.S. v. Amaya*, 509 Fed. 2d 8, 5th Circuit, 1975).

The supplemental charge by the Court to the jury that their verdicts must be unanimous, is error of the type sufficient to turn the scales in favor of a unanimous guilty verdict and to rule out the right of the defendant to a non-unanimous verdict resulting in a mistrial.

Such supplemental instruction has the same constitutional defect as the condemned statement by the judge in Jenkins, supra, that "You have got to reach a decision in this case." (At page 985).

The context under which the Court inquired of juror Allison, and its erroneous supplemental jury instruction clearly demonstrates that it was coercive. Upon being polled, Juror Allison replies that the verdicts of guilty were not her verdict. It was unequivocal. Yet, the Court questions the juror as follows:

"Prior to coming back into the courtroom, did you agree that the verdict to be returned should be guilty?" (Vol. 7, at page 1,184).

The Court, after further side bar conference with counsel for the State and defendant, and over defendant's apparent objection*, charged the jury as follows: "Ladies and Gentlemen, you were previously instructed the verdicts you render must be unanimous. Because of the utterances of Mrs. Allison, it is not clear in my mind whether or not the verdicts reached were unanimous. There is some doubt in my mind with reference to her statement. Therefore, we are

*Counsel for Defendant stated to the Court that he preferred the Court not to question the juror, but after the Court had undertaken to do so, he didn't know what could be done. He did ask the Court for leave to inquire as to what kind of pressure the juror was under, which request was not granted. (Vol. 7, at page 1,187).

returning you at this time to the jury deliberation room. The verdict forms, all of them, will be returned to you, and we are returning you to the jury deliberations room, for, *of course** the purpose of arriving at your verdicts." (Vol. 7, at page 1,193).

This case presents the issue which the Court left undecided in *Jenkins*: Whether supplemental jury instructions having the effect of coercing jurors into surrendering views conscientiously held is a violation of the 6th and 14th Amendments to the Constitution of the United States of America.

This Court should grant Certiorari under Point I in order to establish uniform constitutional standards under the due process clause of the 14th Amendment to the Constitution of the United States of America for establishing territorial limitations on importation criminal offenses.

This Court should grant Certiorari under Point II in order to announce that the 6th and 14th Amendments to the Constitution of the United States of America prohibit Courts from using the power of supplemental jury instructions to coerce jurors into surrendering views conscientiously held in order to reach unanimous verdicts.

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*Our underline for emphasis.

CONCLUSION

Accordingly, probable jurisdiction should be noted in this case.

Respectfully submitted,

JUDGE & WARREN, P.A.

/s/ Dan R. Warren
Dan R. Warren
Post Office Box 5355
Daytona Beach, Florida 32018
1-904-255-3658
Attorney for Petitioner

CERTIFICATE OF ATTORNEY

I, DAN R. WARREN, hereby certify that I am a member of the Bar of the United States Supreme Court in good standing and was admitted to practice by the Court on June 4, 1956.

/s/ Dan R. Warren
Dan R. Warren, Attorney At Law

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original copy hereof has been furnished by mail this 23rd day of March, A.D., 1978, to: THE HONORABLE MICHAEL RODAK, JR., Clerk, United States Supreme Court, Washington, D.C., and copies hereof by personal delivery to: THE HONORABLE SID J. WHITE, Clerk, Supreme Court of Florida, Supreme Court Building, Tallahassee, Florida 32304; THE HONORABLE ROBERT L. SHEVIN, Attorney General for the State of Florida, The Capitol, Tallahassee, Florida 32304; THE HONORABLE WILLIAM HADDAD, Clerk, Second District Court of Appeal, 1005 E. Memorial Boulevard, Lakeland, Florida 33802; and to: THE HONORABLE JED PITTMAN, Clerk of the Circuit Court, Sixth Judicial Circuit, Pasco County Courthouse, New Port Richey, Florida.

/s/ Dan R. Warren
Attorney At Law

APPENDIX A

SUPREME COURT OF FLORIDA

WEDNESDAY, DECEMBER 7, 1977

JAMES G. HULL, JR., Petitioner,	CASE NO. 52,439
vs.	
STATE OF FLORIDA, Respondent.	DISTRICT COURT OF APPEAL, SECOND DISTRICT 76-1339

This cause having heretofore been submitted to the Court on Petition for Writ of Certiorari, jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Florida Appellate Rule 4.5c(6), and it appearing to the Court that it is without jurisdiction, it is ordered that the Petition for Writ of Certiorari be and the same is hereby denied.

OVERTON, C.J., ENGLAND, SUNDBERG, JJ. and DREW, (RETIRED J.), Concur ADKINS, BOYD and HATCHETT, JJ., Dissent

C

cc: Hon. William A. Haddad, Clerk
Hon. Joseph E. Pittman, Clerk
Hon. Lawrence E. Keough, Judge

Dan R. Warren, Esquire of
Judge & Warren
Richard G. Pippinger, Esquire
Terry Furnell, Esquire
Selig I. Goldin, Esquire
James T. Russell, Esquire

A True Copy

TEST:

Sid J. White
Clerk Supreme Court.

By:
Deputy Clerk

APPENDIX B

IN THE SUPREME COURT OF FLORIDA

FRIDAY, FEBRUARY 24, 1978

JAMES G. HULL, JR., **
**CASE NO. 52,439
Petitioner,
vs. **DCA CASE NO. 76-1339

STATE OF FLORIDA, **
Respondent. **

On consideration of the petition for rehearing filed by attorney for petitioner,

IT IS ORDERED by the Court that said petition be and the same is hereby denied.

OVERTON, C.J., ENGLAND, SUNDBERG, JJ. and MASON, RET. CIRCUIT JUDGE,
Concur
ADKINS, BOYD and HATCHETT, JJ., Dissent

ORDERED that the request for stay filed by attorney for petitioner is hereby granted and proceedings in this Court, in the District Court of Appeal, Second District, and in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida, are hereby stayed to and including March 27, 1978, to allow petitioner to seek review in the Supreme Court of the United States and obtain any further stay from that Court.

ORDERED that this stay be subject to continuance in effect of the present appeal bond in the same amount and on the same conditions.

C

cc: Hon. William A. Haddad, Clerk
Hon. Joseph E. Pittman, Clerk
Hon. Lawrence E. Keough, Judge
Dan R. Warren, Esquire of
Judge & Warren
Richard G. Pippinger, Esquire

A True Copy
TEST:

Sid J. White
Clerk Supreme Court

APPENDIX C

IN THE CIRCUTT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PASCO COUNTY FLORIDA

CASE NUMBER 76-404

STATE OF FLORIDA

VS. JUDGMENT AND SENTENCE

JAMES G. HULL, JR.

You, JAMES G. HULL, JR., being now before the Court, attended by your attorney, TERRY FURNELL, and you having (1) been tried and found guilty of [redacted] to VIOLATION OF FLORIDA COMPREHENSIVE DRUG ABUSE PREVENTION AND CONTROL ACT (COUNT I) previously adjudged the Court [redacted] you guilty of said offense, and it is the Sentence of the Law and the Judgment of the Court that you, JAMES G. HULL, JR., be committed to the custody of the (1) Florida Division of Corrections [redacted] for a term of three (3) years, with credit for time served of 14 days while awaiting disposition of this case. Sentence is to be consecutive to sentence already imposed on Count II of this case.

and you are further Ordered to pay a fine [redacted] in the amount of $3,000.00

DONE and ADJUDGED in open Court at New Port Richey, Pasco County, Florida, this the 29th day of November, 1976, pursuant to Rules 3.670 and 3.700 FCRP.

JUDGE

(Fingerprints, if required by Section 30.31 Florida Statutes)

I hereby certify that the above and foregoing fingerprints on this judgment are the Fingerprints of the defendant, JAMES G. HULL, JR. and that they were placed thereon by said defendant in my presence, in open Court, this the 29th day of November, 1976, pursuant to Section 30.31.

JUDGE

BOOK HH PAGE 09F2
CLERK
RECORD VERIFIED

FM-91

APPENDIX D

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED DETERMINED.

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT
JULY TERM, A. D. 1977

DAVID ROGERS,	)	
	)	
Appellant,	)	
	)	
v.	)	CASE NOS. 76-1338
	)	and 76-1414
	)	
STATE OF FLORIDA,	)	
	)	
Appellee.	)	
	)	
JAMES G. HULL, Jr.,	)	
	)	
Appellant,	)	
v.	)	CASE NO. 76-1339
	)	
STATE OF FLORIDA,	)	
Appellee.	)	

Opinion filed July 15, 1977.

Appeals from the Circuit Court for Pasco County; Lawrence E. Keough, Judge.

Selig I. Goldin of Goldin & Cates, Gainesville, for Appellant Rogers.

Terry Furnell, Clearwater, for Appellant Hull.

Robert L. Shevin, Attorney General, Tallahassee, and Richard G. Pippinger, Assistant Attorney General, Tampa, for Appellee.

PER CURIAM

Affirmed.

HOBSON, A.C.J., SCHEB and OTT, JJ., CONCUR.